

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Misuse of Internet Protocol (IP) Captioned)	CG Docket No. 13-24
Telephone Service)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	

ORDER AND NOTICE OF PROPOSED RULEMAKING

Hearing Loss Association of America (“HLAA”) submits these Comments regarding Internet Protocol Captioned Telephone Services (“IP CTS”) to the Federal Communications Commission (“Commission”) in response to the above reference Order and Notice of Proposed Rulemaking (“Order” and “Notice”) on the Misuse of Internet Protocol (IP) Captioned Telephone Service..

HLAA is the nation’s leading organization representing people with hearing loss. We have over 200 chapters and 14 state organizations representing people with hearing loss across the country. Our Comments reflect the perspective of consumers with hearing loss.

Captioned telephone service is the only relay service that offers a truly functionally equivalent option for people with hearing loss who use their voice and residual hearing for phone conversations. These people are teenagers, boomers, veterans, lawyers, small business owners, teachers, doctors, mothers, fathers, husbands, wives, sons and daughters, who are doing their best to get an education, earn a living, pay their taxes, interview for a job, keep healthy, raise a family. HLAA regularly receives queries from consumers about IP CTS. We provide information about CTS at our conventions, on our website and in our magazine, as well as via email and phone and even on site at our office. Consumers tell us they need and use IP CTS services daily.

HLAA is concerned that some of the rules being proposed in this Order and Notice will hurt the very people who need access to these services. To do anything that threatens consumers’ ability to stay connected using IP CTS is counter to the intent of the ADA and the Commission’s own regulations regarding functional equivalency.

HLAA does understand that the Commission is concerned that the rapid growth of IP CTS is so dramatic that it might overwhelm the Telecommunications Relay Fund (“Fund”) which supports all types of Relay services. We agree the integrity of the Fund is essential to ensure all TRS services are supported. But we remain unconvinced that the sudden growth in IP CTS use is a

direct result of consumers defrauding the Fund. Coming on the heels of fraud in other relay services the CTS is being viewed through the same lens looking for fraud without data to back it up and leading to an emergency order with an impact on consumer access to IP CTS that is and may continue to be dramatic.

The Commission's interim Order indicates there has been a "recent and dramatic spike in reimbursement requests to the Interstate Telecommunications Relay Service Fund"¹ and "In recent months, IP CTS has been experiencing unprecedented and unusually rapid growth."² In fact, it appears that the recent growth of IP CTS minutes is the continuation of an exponential growth trajectory that has existed since at least 2010, according to the monthly call minutes documented by the National Exchange Carrier Association, Inc.'s Annual Submission of TRS Payment and Revenue Requirements, for July 2011 – June 2012, IP CTS has been on an exponential curve since January 2010³ and the monthly TRS Fund status reports by Rolka Loube Saltzer Associates.⁴ The available data do not support the existence of a large deviation (i.e. a "spike") from IP CTS's historical growth patterns. In fact, on a year-to-year basis using cumulative annual call minutes, the percentage rate of growth has been declining since 2010, with the peak occurring in 2010.

We concede that it is possible that there has been some inadvertent misuse of the service. It is possible that the phones have entered households where only one of the users has a hearing loss and others in the household may inadvertently use the service even though they do not need captions. But we question how large the problem is. Do we know how many people inadvertently use IP CTS? This inadvertent misuse can be addressed by consumer education. Only when we truly understand the problem can we begin to have answers.

HLAA is concerned that this interim Order and Notice has been drafted with, to the best of our knowledge, very little in the way of research to identify exactly why the increase in usage has occurred. We feel strongly, as we stated in our letter to Commissioners of December 20, 2012 and filed as an ex parte that:

It should come as no surprise to the FCC that usage of this service is high. This is not a new service. The market has always been there and growing steadily. What's new is that there is an increased understanding by relay service providers of how to market to the people who can benefit from the service.

We note that at least one service provider after extensive research has found a marketing method that reaches many more people with hearing loss. Finally people with hearing loss are getting access to the phones they need.

¹ *In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 & 03-123, Order and Notice of Proposed Rulemaking, FCC 13-13 (rel. Jan. 25, 2013) ("Order") at 1.

² Order at 5.

³ National Exchange Carrier Association, Inc.'s Annual Submission of TRS Payment and Revenue Requirements, for July 2011 – June 2012 <http://apps.fcc.gov/ecfs/document/view.action?id=7021341474> (last visited 2/26/2013)

⁴ <http://www.r-l-s-a.com/TRS/Reports.htm>

We do not need to remind the Commission that the authority for oversight of the TRS Fund and IP CTS is derived from Title IV of the Americans with Disabilities Act (ADA). The ADA is a civil rights law. The ADA is *our* civil rights law. Congress enacted the law to ensure that all people with disabilities have the opportunities afforded to all on an equal basis. Title IV specifically addresses the needs of our community, those people with hearing loss who need relay services to successfully use telephones. As Congress also envisioned and provided for, technology has come a long way from the TTY. IP CTS brings functional equivalence to a whole new level for people who use their voice, have some residual hearing and do not use or understand sign language. Those people who depend on IP CTS use it daily to allow them to better function at work, to allow them to make doctor appointments at home, in short to help them become full participants in the world around them.

The ADA does not look for people to certify or swear under penalty of perjury that they are people with disabilities. The ADA only looks for people to *self-identify*, and only then if an accommodation is needed. We believe the emphasis here should be on self-identification for the purposes of access to services that are authorized under Title IV of the ADA. Certifying under penalty of perjury should not be part of a process that provides for a consumer's civil rights.

Instead of focusing on searching for ways to limit how many consumers can get access to IP CTS, we urge the Commission to gather data to help us understand whether there are problems with usage and if so where the problems lie and what exactly should be done in response to the specific problems identified.

We urge the Commission to reassess the assumption that the increase in usage is the result of fraud or misuse.

We urge the Commission to take a hard look at the methodologies used to predict and budget for TRS.

We also urge the Commission to assess whether increased contributions to the Fund are needed and warranted in light of using better models to predict usage before shutting down or strangling access to the service by consumers who need IP CTS.

HLAA has considered carefully the rules issued under the Commission's interim Order and the rationale behind the rules. We find we support in part, but find we cannot support all of the interim rules because of the inordinate burden it places on consumers. HLAA's position on key points:

Consumers should never have to prove eligibility for IP CTS based on their degree of hearing loss measured in decibels.

Consumers should only need to self-identify as a person with hearing loss to be deemed eligible for relay services; they should not have to provide certification regarding their hearing loss made under penalty of perjury provided either directly to a service provider or to a third party.

Rewards programs should end permanently. Audiologists and hearing instrument specialists are logical professionals to educate consumers about how to be able to use the phone and should be encouraged to be a source of information for consumers, and refer consumers who need IP CTS to that service. However, since it is part of their counseling of patients with hearing loss, no referral fees should be awarded.

IP CTS equipment should not be distributed for free to all; instead only income eligible consumers should have access to free phones, others should have access to phones provided at a minimum cost of \$75.

IP CTS equipment should be made available to consumers with the default position of captions on. Turning captions off should be an easy, one-step process.

Consumers should receive education about IP CTS that includes information about how the service works, including information about the TRS Fund.

Summary of our other Comments:

- HLAA urges the Commission to gather data to determine whether there are problems, and if so how to address any problems with IP CTS usage.
- Software is a separate issue from hardware issues. The *de minimis* cost should be set below \$1.00 for software downloaded to equipment already in the possession of the consumer, or for apps that provide captions on mobile devices.
- The self-identification statement should be a stand-alone document. Consumers should state that they need to communicate over the phone using IP CTS as the most functionally equivalent service available. The same document should include information and education about the service.
- All new procedures should apply to new users of IP CTS services only, not those who already have access to the service via equipment or downloads for mobile phones.
- Guidelines and best practices for IP CTS should be adopted.

A. The Recent Increase in IP CTS Minutes of Use

38. The Commission asks for comments regarding the rapid growth of IP CTS.

There are any number of possible reasons why there has been a steep increase in the number of minutes used by IP CTS. While there may be inadvertent use we are skeptical that there is rampant fraud. Some reasons include:

- More and more people are aging into hearing loss. Estimates of the number of

Americans with hearing loss are as high as 48 million and growing.⁵ Most of those people do not use sign language. Many of those people would benefit from IP CTS services.

- The only way people will use IP CTS or any relay service is they know about it. Many state relay programs have done a poor job of reaching the people who can benefit from CTS services. Any improvement over the lack of marketing done by the states would logically result in greater numbers of users.
- It's our understanding that recently service providers have been more aggressive in marketing IP CTS to consumers. They are reaching out to retirement villages, non-profit organizations, audiologists and hearing aid dispensers. They are installing phones for seniors who are not comfortable with technology. They are demystifying the phone for seniors and even installing the equipment, making it a product people feel comfortable using.
- There are technical reasons IP CTS will be producing more minutes than analog CTS. One-line analog CTS provides captioning on outgoing calls only; incoming callers must dial an 800 number before they can connect to CTS service. Consumers were understandably reluctant to ask others to call an 800 number to reach them. While two-line CTS provides a way around that problem, the burden then shifts to consumers who must decide to spend the time and money to have a second phone line installed in their homes. IP CTS makes it easy to have captioning on both outgoing and incoming calls once the phone is installed. That in and of itself will mean an increased number of minutes used by the service for each phone installed.
- In some cases, spikes in use might be out of the control of both the consumer and the service provider. For example, one consumer contacted us telling us that during the 2012 Presidential election, he received numerous robo calls from the campaigns of multiple candidates. While that event might not have resulted in a noticeable increase in the minutes used in this funding cycle, the Commission should be aware that such outside events will no doubt have an impact on legitimate minutes used.
- When consumers with hearing loss find a functionally equivalent way to use the phone they will use it more often.

However, all of this is conjecture. HLA believes that rules should not be based on conjecture, but on research showing exactly what is happening with IP CTS use. We are pleased to see that the Commission does ask commenters to provide specific data and directs the TRS Fund administrator to collect and analyze data to determine the source of growth in IP CTS to be submitted into the record. We are also pleased to see that the TRS Fund administrator is directed to incorporate IP CTS growth projections in its next TRS contribution factor recommendation.

We urge the Commission to review all incoming data carefully to see whether in fact the increase in minutes is simply the result of reaching out to new eligible users. If in fact there

⁵ Katherine Bouton, *Straining to Hear and Fend Off Dementia*, *New York Times*, February 13, 2013 found at < http://well.blogs.nytimes.com/2013/02/11/straining-to-hear-and-fend-off-dementia/?nl=todaysheadlines&emc=edit_th_20130212> (last visited February 13, 2013).

are problems that need to be addressed, what are those problems? If the Commission cannot do such research internally, we strongly urge the Commission to consider turning to outside, impartial research entities, such as the RERC-TA, to study the issue to get to the heart of the matter before instituting permanent rules.

B. Referrals for Rewards

39. The Commission seeks comment on whether they should permanently prohibit referrals for rewards programs.

HLAA agrees with the Commission that all referrals for rewards programs should end permanently. Financial or other rewards or incentives tend to shift the focus from the service to the reward. Those who accept cash referrals may steer consumers to a particular telephone or service provider rather than to the service itself, and not provide information about other available choices.

As a non-profit consumer organization, HLAA's policy has long stated that we do not endorse any one product or service when other services are available. In light of IP CTS referrals program, we will again issue guidance to our affiliates reminding them of this policy.

Hearing health care professionals and non-profit organizations that serve people with hearing loss are a logical place for consumer to find out about IP CTS. Those professionals and organizations should be made aware of the service, and should in turn ensure that consumers are aware of the service without expectation of fees or rewards. If on the other hand, should a professional, non-profit organization, individual or company become a dealer of the equipment, that relationship with the service provider should be disclosed transparently to consumers prior to purchase.

C. Provider Dissemination of Free End IP CTS User Equipment

41. The Commission seeks comment on their proposal to prohibit provider programs that give away or loan equipment at no cost or at *de minimis* cost.

We cannot know whether all the people who have received free phones are eligible users of captioned phone services. The only direct knowledge we have of users of IP CTS are of HLAA members who have received either free or subsidized phones who are clearly eligible for, entitled to, and benefit from IP CTS. We again stress that the Commission should expect the number of people who need captioned services to increase as the population ages where the incidence of hearing loss is greatest. Service providers have told us that the majority of their users are seniors.

De minimis cost

The Commission also seeks comment on how to define “*de minimis cost*.”

We agree with the Commission that phones distributed for a very low cost, for example, \$5, will have the same impact on the consumer as giving away the equipment for free. However, we also believe that it is possible to set a “*de minimus cost*” so high that it will serve as a barrier to consumers whose incomes are too high to qualify for a free phone, but are of modest means and unable to purchase a phone if the cost is too high.

We reviewed a random sample of 20 phones posted on the Amazon.com website. In our search, we did not screen for amplification or other features that are typically provided on “specialty” phones: they were simply the first 20 phones that appeared. Nonetheless, out of the 20, only 7 were traditional phones; all others included such features as amplification, loud ringer, visual ringer, and/or large buttons. The price range of the retail cost of these was anywhere from \$9.56 - \$69.95; the average price before discounting was \$34.25. The range of specialty phones was \$12.99-\$59.95. The average of specialty phones was \$32.12. The average discounted cost was \$28.53. However, when we visited websites that specifically sell “specialty phones” we found the prices significantly higher: the average was \$123.95. Clearly, people who do not have a hearing loss have more options in phones at lower cost.

If the Commission determines there is a need to set a *de minimus cost* for the phones, we suggest setting the “*de minimus cost*” at phones that cost less than \$75. That would be higher than the average of specialty phones we found in our sample from Amazon.com. If a consumer is shopping for phones and can still benefit from a specialty phone, then it would cost that person less to purchase a specialty phone captioned telephone.

But we are guessing. Without market research we cannot know with certainty at what point the consumer will determine the benefits of purchasing captioned telephone equipment outweigh the cost. We have no way of knowing whether a \$75 charge for a phone is the proper cutoff any more than \$25 charge would be. If the Commission does not adopt our proposal for free phones to income-eligible consumers who need only self-identify, then we are concerned that we do not know at what point the *de minimus cost* set too high so that people of modest means have to carry the burden of finding the time to get a third party to certify their hearing loss, while those who are more affluent can simply pay the higher price for the phone. We urge the Commission to gather data on this point.

Provisions for people with limited incomes

The Commission also seeks comments on the extent to which governmental programs are able to provide IP CTS equipment to people with limited incomes, making the free distribution of equipment by providers unnecessary.

HLAA believes there must be provision for people of low income or modest means. The Commission cannot depend on state programs* to deliver the equipment to all consumers who are eligible.

- Not all states have equipment distribution programs.
- States that do have such programs may or may not include provision of IP CTS phones.
- Some states limit the number of consumers who will receive equipment in a given fiscal year.
- Each state has different rules for provision of phones, so that a consumer eligible in one state for an IP CTS phone may not be able to receive one if they move.
- Those who have received a phone from State programs may or may not be able to take the phone with them when they move to another state.
- Many state programs are poor at marketing captioned phones so that the people who are eligible are often unaware of the service or do not realize they are eligible to receive the equipment at a reduced cost or for free.

*HLAA has recently surveyed the state equipment distribution programs. (See attachment A, also at <http://www.hearingloss.org/content/tedps-state-listing>)

The Commission should create a federal program of provision of IP CTS phones to income eligible consumers for free or at a low cost, just as they have for the Deaf-Blind Equipment Distribution program. Such a program would be able to set requirements and standards to allow a uniform distribution of IP CTS phones regardless of where someone lives, or which phone or service the consumer chose to use. Like the Deaf-Blind equipment program, establishing criteria that is based on income, such as a 400% of Federal Poverty Guidelines, would allow people who could not otherwise purchase the phone to be able to benefit from the service. HLAA would support such a program.

We have heard concerns that a program that sets income eligibility for provision of phones will not overcome the need for qualifying consumers to have access to the Internet. However, we are seeing that programs such as Lifeline and Linkup include access to the Internet for low income people. The Commission has supported such programs as “Connect2Compete” which seeks to bring Internet access to more Americans, including those of low and modest means. In Chairman Genachowski’s recent remarks on that program, he said:

We can’t have millions of Americans on the wrong side of the digital divide. That’s the problem that Connect2Compete is working to address, every day. Connect2Compete is focused on tackling the obstacles to broadband adoption – primarily cost and digital literacy.⁶

Individuals who certify their income should not have to shoulder the additional burden of spending the time and money needed to get a third party certification of hearing loss.

If the Commission determines that a third party certification of hearing loss for those receiving free phones is necessary, we urge the Commission to create a long list of certifying

⁶ Federal Communications Commission, Prepared remarks of Chairman Julius Genachowski Connect2Compete Announcement, Southwest Family Enhancement Center, February 14, 2013. Found at <http://www.fcc.gov/document/chairman-genachowski-remarks-connect2compete-announcement> (last visited February 18, 2013).

professionals so that finding a certifying professional is not onerous. We are also concerned that some professionals will see this as an opportunity to charge consumers for their time completing a form that certifies eligibility. We urge the Commission to create rules that prohibit professionals from charging a fee for completing third party certification forms.

We urge the Commission to ensure that subsidized phones, at \$75 or above, continue to be available for consumers whose income is too high to qualify for free phones. These consumers should be able to self-identify as having a hearing loss. They should not need to turn to a third party for certification of hearing loss.

We urge the Commission to continue to allow full price and discounted phones to be marketed and sold to consumers who can self-identify as having a hearing loss.

Whether or not the Commission establishes a program for income eligible consumers to receive free or low cost captioned phones, the Commission should set up guidelines for service providers in their distribution of free or subsidized phones. In addition, the terms and conditions for receipt of a captioned telephone, whether free, subsidized or purchased outright, needs to be very clear.

For example, we have learned that at least one consumer has been threatened with removal of the IP CTS phone unless she increased her usage of the phone. We oppose such practices. We urge the Commission to create guidelines to ensure that consumers who qualify for these services are not threatened with removal of the equipment because of low usage, regardless of whether they received the phone for free, at a subsidized price or for full price.

In addition, the terms of use of IP CTS services be clearly explained and provided in writing to consumers when the phone is delivered. Consumers should be aware whether they receive the phone for free, subsidized or at full price, whether that phone is owned by the service provider or the consumer.

Software

The Commission seeks comment on whether they should adopt any prohibitions with regard to the free or *de minimis* cost distribution of software that facilitates the use of IP CTS.

Provision of software for equipment already in the possession of consumers is a separate issue. Distribution of software for the purpose of updating a program on a landline or mobile phone is a natural and desirable outcome of product development in an IP world. If consumers are required to pay a \$75 fee each time the provider updates their software, these fees could become so costly that the consumer would either have to opt out of the updates or purchase new equipment.

In addition, the initial download for mobile IP CTS should be viewed entirely differently than for landline IP equipment. Consumers understand that obtaining a piece of equipment comes at a cost. However, consumers generally find free or very low cost – in the range of \$.99 to \$10

generally - downloadable applications for their mobile devices that add a variety of needed and desirable functions to their mobile devices. Setting a fee that is significantly higher than most mobile applications will create needless barriers for consumers for whom mobile captioned phone services may be critical, such as in emergency situations while traveling. We suggest that mobile applications be distributed for free.

Consistent with our views of how consumers should be able to show eligibility for these downloadable applications, we believe that consumers should only need to self-identify. As long as the same statement form is used, educating the consumer about how the Fund supports the service, and that there is a caller assistant on the line to provide the captions, the consumer is in the best position to know whether he or she needs this service. We do not anticipate wide ranging fraud. Providing a free phone may be appealing to many people, but we are skeptical that people who do not need the service will download an app to a mobile device they have purchased on their own that brings in a third party who is creating captions they do not need into their phone conversations. Also, both parties to an IP CTS call hear the voice on the other side, so we believe there is a significantly lower potential for the kind of fraud that came about as a result of IP Relay. In short, we see no reason why there is a need to create hurdles for consumers who could benefit from having access to captions on their mobile phones.

D. Registration, Threshold Eligibility and Certification Requirements

42. The Commission seeks comment on whether to make the interim registration requirements permanent for new IP CTS users.

We support permanent rules as follows:

- (1) Registration of all new IP CTS users.
- (2) Obtain from each user a statement of self-identification of having a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by convention voice telephone users.
- (3) Provide for low income eligibility standards for free captioned telephone equipment, similar to that which is offered for the National Deaf-Blind Equipment Distribution Program but without requiring any third party certification of hearing loss.

Existing users

The Commission also seeks comment on whether we should include existing users within these requirements.

These rules should not be retroactively applied. We urge the Commission to make these rules on a going-forward basis only.

Unless the Commission finds overwhelming evidence that a vast number of users have actively engaged in fraud, the burden would far outweigh any benefit of turning away the few who may have unintentionally signed up for a program that they do not need..

Penalty of perjury for third party certification

The Commission also seeks comment on whether, where certification from independent, third party professionals is required, such certification should be made under penalty of perjury as an added layer of assurance that the individual's disability satisfies our eligibility requirements.

HLAA is concerned that if consumers are required to leap too many hurdles to get access to the IP CTS, they may give up and effectively be shut out of a very beneficial service. We do not believe any consumer should have to seek a third party to certify hearing loss or should provide any statement under penalty of perjury.

- Low income individuals should have access to free IP CTS equipment by certifying income and providing a statement that self-identifies as having a hearing loss.
- Consumers purchasing equipment should only be required to provide a statement self-identifying as having a hearing loss.
- Self-identification statements should be written in plain language.
- Guidelines for distribution of equipment, including whether the consumer owns the phone and terms of use such as whether the provider has the authority to repossess the phone, should be provided in plain language to consumers.

However, if the Commission determines that any statement must be made under penalty of perjury, HLAA believes the penalty should be clearly spelled out on the certification, so that consumers understand the consequences of any fraudulent statements or of any misstatements.

Specifications for self-identification forms

43. The Commission seeks comment as well on whether to adopt the same specifications as in the interim rules for the form and content of any self-certifications, or different specifications.

1. Specifically, the Commission seeks comment on whether to require the self-certification to state that
 - (1) the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users;
 - (2) the user understands that the captioning service is provided by a live communications assistant (CA); and
 - (3) the user understands that the cost of the IP CTS calls is funded by the federal TRS Fund.

We agree that these kinds of statements are reasonable for consumer self-identification as having a hearing loss. However, we suggest that plain language should be used. For example, "the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users" will not be understood by many if not most consumers. We suggest instead language such as, "the user has a hearing loss and needs captions to be able to fully understand phone conversations." In

addition, we believe consumers will better understand a statement such as, “the user understands that the captioning is provided by a live communications assistant (CA) who listens to the other party on the line and provides the text on the captioned phone.”

In addition, provision should be made for family members who purchase IP CTS equipment for their aging parents or other family members. The person purchasing would certainly not self-identify in that case, but should be able to certify the hearing loss of their family member. Alternately, the family member could certify hearing loss of the family member until that person receives the equipment and signs the self-identification statement.

Separate page for self-identification forms

The Commission also seeks comment on whether the self-certification must be made on a form separate from any other user agreement (such as on a separate page), and require a separate signature specific to the self-certification.

The form for self-identification for having a hearing loss should be a separate page that is clearly identified as such, and clearly different than any other information provided about the IP CTS phones or services. The consumer should sign and date that page.

Penalty of perjury for self-identification forms

The Commission seeks comment on whether such self-identification should be made under penalty of perjury.

We are concerned that self-certification made under “penalty of perjury” shifts the burden of any misstatements from the provider of the IP CTS phone to the consumer.

We are not convinced that consumers are generally and in large numbers defrauding the TRS fund by willfully lying about their hearing status. If we are correct, threatening fines and/or time in jail for lying will not solve the problem of the spike in TRS minutes used. This burden should not fall on the shoulders of consumers.

We are also concerned such penalty doesn’t address at all the issue of third party providers who are eager to encourage consumers to install a “free” phone, without regard to whether the consumer is entitled to use the service. For example, we have learned that Miracle Ear has advertized a free IP CTS phone with each hearing test. (See Attachment B). If Miracle Ear, or any other third party, purchases an IP CTS phone outright and gives it away to a customers as an incentive to come to their store, we believe that Miracle Ear, or similar third parties, should be required to certify that they provide the phones only to eligible recipients, and that statement should be made under penalty of perjury. That third party should also be required to fully understand the terms of use of the IP CTS and explain those terms to the consumer.

Additionally, if any third party becomes a dealer for a service provider, that dealer should also be required to certify that they provide phones only to eligible recipients.

If the Commission determines that the consumer's self-identification attesting to the need for the IP CTS phone because of that consumer's hearing loss requires that it be made under penalty of perjury, that penalty should be clearly spelled out so that consumers understand the consequences of fraudulent statements or misstatements. Most consumers have no idea what the penalty for perjury is.

Quantitative threshold requirements

44. The Commission seeks comment on whether to adopt any quantitative threshold requirements to be eligible to use IP CTS. The Commission also seeks feedback on whether they should allow states to use their own eligibility thresholds for IP CTS calls made by their residents to the extent that these exceed our federal standards, so long as such state requirements do not conflict with federal law.

We firmly, adamantly and vehemently oppose any move to set a decibel level threshold requirement to be eligible to use IP CTS. We repeat our arguments provided in our ex parte filings of December 20, 2012, and January 7, 2013 that a dB criteria would be arbitrary. Even with a hearing loss of 40 dB, the amount of average conversational speech signal missed can be as high as 60 percent or more. In her book, "Shouting Won't Help" author Katherine Bouton says:

Jess Dancer an emeritus professor of audiology at the University of Arkansas, recently noted that "it's not unusual for speech intelligibility to increase from 20 percent when listening in noise without vision to 80 percent or more when the speaker is seen as well as heard. Writing in an on-line professional hearing journal⁷, he went on: "This four-fold performance improvement is based upon the principle of 'bisensory integration,' in which combining two senses produce[s] more information together than would be predicted from merely adding the performance of the two senses separately."⁸

Clearly, conversations on a captioned telephone are held without the benefit of visual input. We believe that any dB measurement will not be able to account for the loss of bisensory information that Dr. Dancer refers to.

We are also concerned that setting a dB level certification would set a terrible precedent for people with disabilities who have access to services and products that are protected by the Americans with Disabilities Act. Title I of the ADA provides for people with disabilities who wish to disclose their disability to their employer. In such cases, the individual must self-disclose his or her disability, but there is no request for a certification that is entered into under penalty of perjury. Likewise, under Title III, individuals are not asked to certify their disability. Their request for accommodation has always been through self-identification. Nowhere in the ADA does it say an individual needs to be 'disabled enough' to receive accommodations. Consumers should not have to prove they are 'disabled enough' to qualify for TRS services.

⁷ Dancer, Jess, *Watch and Hear Better*. Advance for Audiology, May 27, 2008. Found at <http://audiology.advanceweb.com/Article/WATCH-and-Hear-Better.aspx> (last viewed February 21, 2013).

⁸ Bouton, Katherine, *Shouting Won't Help* 22 (1st ed 2013).

E. Default Captions Off

51. The Commission seeks comment on whether to make the interim rule requiring IP CTS providers to ensure that equipment and software used in conjunction with their service have captions turned off as the default setting at the beginning of each call, so that the consumer must take an affirmative step to turn on the captions each time the consumer wishes to use IP CTS.

Consumers have contacted us letting us know they would by far prefer to have captions on as the default position for IP CTS equipment. The service is in fact designed for use by people with hearing loss who need captions. Consumers want those captions to be engaged before the start of the conversation.

Having phones set with a default of captions on is easier for seniors with hearing loss who also have cognitive disabilities such as dementia. In those cases, it's even more important that the consumer receive calls without having to remember how to take any affirmative step to turn the captions on.

HLAA also understands that two providers of IP CTS services in their ex parte filings indicate that setting of default of the captions off does little to limit the number of IP CTS minutes used. If captions off does not accomplish the desired end, we contend it should not be continued on a permanent basis.

We urge that the Commission use the time that the Order is in effect to determine whether captions on or captions off as the default provides any significant difference in the number of minutes used by IP CTS users. If the Commission finds that having the default off for the captions makes no significant difference in the number of IP CTS minutes used, we urge the Commission to require the default position to be captions on once again.

We also note that one problem with at least one IP CTS phone is that turning the captions off is not easy or intuitive. That design flaw should be changed so that the captions can readily be turned on or off through a one-step, easy to understand process.

We urge the Commission to require a one-step, easy to understand process is provided for users to turn the captions off when captions are not needed.

However, if the Commission finds that changing the default position to captions off provides a significant reduction in minutes used, we will support final rules that require the captions are off when the consumer lifts up the receiver on the phone, so long as turning the captions on is a one-step, easy to understand process and the connection time is virtually instant, certainly between 3-5 seconds as it is now for captioned phones, and just as it is for a dial tone on a traditional phone.

In addition, if the Commission determines that the default of captions off should remain permanent, provision should be made for answering machines that are connected to the IP CTS equipment. Currently, IP CTS answering machines allow the user to see the text of a message. We suggest that the Commission consider the affirmative act of turning on an answering machine is equivalent to turning on the captions for any incoming call.

We also wish to alert the Commission that we have heard concerns that if the default for the volume control is tied to the captions, and the default for the captions is required to be off, then both the volume control and the captions would need to be manipulated for most people with hearing loss before the conversation begins. The ability to manipulate the volume, or preset the volume loud enough to accommodate a hearing loss, should not be linked to the setting for the captions.

Speed of Answer Rules

52. The Commission asks whether the speed of answer rules are appropriate for IP CTS.

To be a functionally equivalent phone service, connection time should be comparable to picking up a traditional phone and connecting to a dial tone. Connection time with captioned telephones currently is virtually instant, often less than three seconds, which is similar to reaching a dial tone on a traditional phone. Consumers have come to expect that quick connection time. The connection time between the time the consumer turns on the captions and the arrival of the text should also be less than five seconds.

The connection should also occur whenever the consumer needs it. The connection should be three-five seconds whether the caller turns on the captions before lifting the receiver, or if the consumer picks up the receiver, turns on the captions and then dials the number, or if the consumer picks up the receiver, dials the number and then turns on the captions. In fact, currently consumers can, with some models, turn the captions on or off as needed even in the middle of a phone conversation, with a three to five second connection time. That is the way it should be. Consumers must have the option to turn captions on or off with minimum delay between the action of turning the captions on and the appearance of captions.

F. Notification Label

55. The Commission seeks comment on whether they should require that each piece of new IP CTS equipment have a label on its face in a conspicuous location specifying that FCC regulations require that captions may be used only by people with hearing loss who require captions to fully understand telephone conversations.

HLAA is skeptical that a label used alone will discourage use by people who are not entitled to use the phone. We note that one service provider as part of their best practices already posts a label on the phone that has to be removed before starting to use the phone. Consumers must be educated about the source of the funding for the program as well as how IP CTS works, not

by the label alone, but by multiple and repeated sources of information, such as provider's websites, the self-identification statement, the contract, if there is one, brochures about the service, manuals for the equipment, and advertisements for the phone and the service.

That said, we have no objection to the using a label as one method to alert users about the proper use of the phone. Probably the most likely deterrent for improper use is when people learn that there is a third party, the caller assistant, on the line.

The Commission also seeks comment on whether they should require, for equipment that is already in the hands of users, that IP CTS providers send such labels to their registered users of this service, with specific instructions directing users to affix such labels on the front of their IP CTS equipment in a conspicuous location.

HLAA is again skeptical that these labels will be effective, and further that consumers will affix labels on the phone that are set to them. If we are right, it will be wasteful to require such labels. That said, we have no objections to using this method to alert users of the phone that the captions are only for those who need to use them, as part of a larger educational effort.

The Commission also seeks comment on whether they should require that the same information be provided on the caption screen when the equipment is turned on and in captions-off mode, as well as during the time period after the user pushes the "captions on" button (or takes some other similar action to initiate captioning) and before captioning commences.

Providing a screen that indicates that the phone is only for IP CTS users could be an effective way to educate those who use the phone and/or the service, in addition to other methods of consumer education. However, we are still unsure how much consumers will attend to the new screens, and urge the Commission to use any labels or screen messages in conjunction with other educational efforts.

Consumer complaints and concerns

We believe that consumers may well have many questions and concerns, as well as complaints over the coming months regarding the CTS services. Consumer experience will provide the Commission with important insights into how effective the service is under the interim Order. We urge the Commission to ensure that consumers will be able to not only use the Commission's ECFS forms to complain, but be able to send complaints or questions directly to the Disability Rights Offices via email, phone or other suitable method that is not intimidating to consumers. Methods should also be devised to handle complaints that are received by service providers, non-profits or others to report back to the Commission complaints that end up on their desks.

CONCLUSION

IP CTS provides a needed and valuable service to consumers with hearing loss. Consumers praise the service, despite its problems because it's the most functionally equivalent service available for people with hearing loss who do not use sign language. Still, we are well aware that IP CTS it is in no way a perfect service. We look forward to better technology that will allow access to the spoken word via text without the mistakes that now appear, and without long delays between what is said and the text that appears. We hope to see innovation that will allow us IP CTS phones that will integrate with phones in the workplace. We look forward to phones that can support wide band that will ensure that the sound quality on the phone is the best available to augment our residual hearing. In short, we look forward to the future of IP CTS.

Whatever the future holds, we look to the Commission to ensure that nothing in this proceeding or future proceedings prevents consumers from having full access to functionally equivalent phone services, including IP CTS, afforded by the Americans with Disabilities Act.

Thank you for the opportunity to comment in this matter.

Sincerely,



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